

Arizona Supreme Court

Civil Election Appeal

CV-20-0253-AP/EL

AZ PUBLIC INTEGRITY et al v ADRIAN FONTES et al

Appellate Case Information

Case Filed: 9-Sep-2020

Case Closed:

Dept/Composition IN DIVISION

Hon. Robert Brutinel
Hon. Andrew W. Gould
Hon. John R. Lopez
Hon. James P. Beene

Side 1. ARIZONA PUBLIC INTEGRITY ALLIANCE INC and TYLER MONTAGUE, Plaintiff

(Litigant Group) ARIZONA PUBLIC INTEGRITY ALLIANCE INC and TYLER MONTAGUE

- Arizona Public Integrity Alliance Inc
- Tyler Montague

Attorneys for: Plaintiff

Alexander Michael del Ray Kolodin, Esq. (AZ Bar No. 30826)
Christopher A Viskovic, Esq. (AZ Bar No. 35860)
Chris Ford, Esq. (AZ Bar No. 29437)

Side 2. ADRIAN FONTES (In his official capacity as Maricopa County Recorder), FRANK MCCARROLL (In her official capacity as Clerk of the Maricopa County Board of Supervisors), CLINT HICKMAN, JACK SELLERS, STEVE CHUCRI, BILL GATES, AND STEVE GALLARDO (In their official capacities as members of the Maricopa County Board of Supervisors), AND MARICOPA COUNTY, Defendant

(Litigant Group) ADRIAN FONTES (In his official capacity as Maricopa County Recorder), FRANK MCCARROLL (In her official capacity as Clerk of the Maricopa County Board of Supervisors), CLINT HICKMAN, JACK SELLERS, STEVE CHUCRI, BILL GATES, AND STEVE GALLARDO (In their off

- Adrian P Fontes, Maricopa County Recorder's Office
- Fran McCarroll, Maricopa County Board of Supervisors
- Clint L Hickman, Maricopa County Board of Supervisors
- Jack Sellers, Maricopa County Board of Supervisors
- Steve Chucri, Maricopa County Board of Supervisors
- Bill Gates, Maricopa County Board of Supervisors
- Steve Gallardo, Maricopa County Board of Supervisors
- Maricopa County

Attorneys for: Defendant

Joseph Eugene La Rue, Esq. (AZ Bar No. 31348)
Thomas P Liddy, Esq. (AZ Bar No. 19384)
Emily M Craiger, Esq. (AZ Bar No. 21728)
Joseph Branco, Esq. (AZ Bar No. 31474)
Allister R Adel, Esq. (AZ Bar No. 23061)

Side 3. Attorney General Mark Brnovich, Amicus Curiae

(Litigant Group) Mark Brnovich

- Mark Brnovich, Arizona Attorney General's Office

Attorneys for: Amicus Curiae

Mark Brnovich, Esq. (AZ Bar No. 14134)
Joseph A Kanefield, Esq. (AZ Bar No. 15838)
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Jennifer Wright, Esq. (AZ Bar No. 27145)

CASE STATUS

Sep 10, 2020....Submitted

Sep 10, 2020....At Issue

Sep 9, 2020.....Decision Rendered

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA 1 CA-CV 20-0458					
⚡ MAR LC2020-000252-001			James D Smith, Authoring Judge of Order Comments: (none)		

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11 PROCEEDING ENTRIES

1. 9-Sep-2020 On September 8, 2020, Appellants Arizona Public Integrity Alliance/Tyler Montague filed an "Appellants' Petition to Transfer." After consideration,

IT IS ORDERED granting the motion.

IT IS FURTHER ORDERED Appellants will re-file the opening brief in this Court no later than 2:00 p.m. on Wednesday, September 9, 2020. The election case number designated to re-file will be CV-20-0253-AP/EL.

IT IS FURTHER ORDERED Appellees may file an answering brief no later than 12:00 p.m. on Thursday, September 10, 2020.

IT IS FURTHER ORDERED that the briefs may be in memorandum format (no tables of contents or authorities) in a legible font (14-point), double-spaced, with the briefs to include all arguments the parties wish to present to the Court. There will be no reply brief. This matter will be decided without oral argument.

IT IS FURTHER ORDERED that in addition to filing briefs with the Clerk of the Supreme Court (with filing and service through AZTurboCourt) all filings are also to be sent by email to all the parties and court staff no later than the filing deadlines.

IT IS FURTHER ORDERED the Clerk of the Court of Appeals shall transmit the entire record to this Court no later than 12:00 p.m. on Thursday, September 10, 2020. (Hon. Robert Brutinel)
2. 9-Sep-2020 FILED: Appellants' Opening Brief Expedited Review Requested; Certificate of Service; Certificate of Compliance (Appellants Arizona Public Integrity Alliance/Tyler Montague)
3. 9-Sep-2020 FILED: Record from CofA: Electronic Record
4. 10-Sep-2020 FILED: Notice of Appearance (Attorneys Liddy, Craiger and Branco for Appellees); Certificate of Service (Appellees Fontes, et al.)
5. 10-Sep-2020 FILED: Answering Brief; Certificate of Service; Certificate of Compliance (Appellees Fontes, et al.)
6. 10-Sep-2020 FILED: Brief of Amicus Curiae Arizona Attorney General in Support of Appellants; Certificate of Service; Certificate of Compliance (Amicus Curiae)
7. 10-Sep-2020 FILED: Record on Appeal: MCSC

Index, Instruments and ME's (Electronic)

Exhibits (None)
8. 10-Sep-2020 The Court, by a panel consisting of Chief Justice Brutinel, Justice Gould, Justice Lopez, and Justice Beene, has considered the briefs of the parties, the record, the trial court's ruling, and the relevant statutes and case law in this expedited election matter.

Plaintiffs sought to enjoin the Maricopa County Recorder and the Maricopa County Board of Supervisors from including a particular instruction ("New Instruction") with mail-in ballots for the 2020 general election. The New Instruction informed voters that that they could vote for one candidate and, if they made a mistake, could cross out their selection and vote for a different candidate.

On September 4, 2020, the trial court determined that although Plaintiffs showed a likelihood of success on the merits, Plaintiffs did not meet the other criteria to warrant a preliminary injunction. The trial court, therefore, denied Plaintiffs' application for a preliminary injunction.

The Court finds Defendants exceeded their authority by proposing to include the New Instruction. While election statutes have changed, the permissible voter instructions, as authorized by A.R.S. § 16-502 and the Election Procedural Manual, have not. Further, we conclude that Plaintiffs have satisfied the requirements for obtaining a preliminary injunction.

IT IS ORDERED reversing the trial court's order.

IT IS FURTHER ORDERED enjoining election officials, the Maricopa County Recorder and its vendors from inserting the "New Instruction" in the envelopes with the ballots for the November 3, 2020 general election.

An opinion will follow. (Hon. Robert Brutinel)

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11 PROCEEDING ENTRIES

9. 10-Sep-2020 AMENDED ORDER FILED
- The Court, by a panel consisting of Chief Justice Brutinel, Justice Gould, Justice Lopez, and Justice Beene, has considered the briefs of the parties, the record, the trial court's ruling, and the relevant statutes and case law in this expedited election matter.
- Plaintiffs sought to enjoin the Maricopa County Recorder and the Maricopa County Board of Supervisors from including a particular instruction ("New Instruction") with mail-in ballots for the 2020 general election. The New Instruction informed voters that that they could vote for one candidate and, if they made a mistake, could cross out their selection and vote for a different candidate.
- On September 4, 2020, the trial court determined that although Plaintiffs showed a likelihood of success on the merits, Plaintiffs did not meet the other criteria to warrant a preliminary injunction. The trial court, therefore, denied Plaintiffs' application for a preliminary injunction.
- The Court finds Defendants exceeded their authority by proposing to include the New Instruction. While election statutes have changed, the permissible voter instructions, as authorized by A.R.S. § 16-502 and the Election Procedural Manual, have not. Further, we conclude that Plaintiffs have satisfied the requirements for obtaining a preliminary injunction.
- IT IS ORDERED reversing the trial court's order.
- IT IS FURTHER ORDERED enjoining election officials, the Maricopa County Recorder and its vendors from inserting the "New Instruction" in the envelopes with the ballots for the November 3, 2020 general election.
- An opinion will follow. (Hon. Robert Brutinel)
10. 11-Sep-2020 FILED: Notice of Errata [Correct statement on Page 13 that the "accompanying instruction are being printed" to "...the County's vendor has already printed the early ballot instructions."]; Certificate of Service (Appellee Fontes, et al.)
11. 24-Sep-2020 FILED: Appellants' Statement of Attorneys' Fees and Costs; Certificate of Service; Appellants' Affidavit in Support of Their Statement of Attorney Fees and Costs (Appellants Arizona Public Integrity Alliance/Tyler Montague) (Attorney Fees - \$32,321.00 /Costs -\$319.11)